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APR 16 2008

TECHNOLOGY CENTER 2100

In re Application of:)
Richard OESTERREICHER, et al.)
Application No. 10/609,426) **DECISION ON PETITION**
Filed: June 27, 2003) **UNDER 37 CFR § 1.181**
For: SYSTEM AND METHOD FOR)
DIGITAL MEDIA SERVER LOAD)
BALANCING)

This is a decision on the petition filed Sept 24, 2007 under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner and require the Examiner to enter the After Final proposed amendments submitted July 09, 2007.

The petition is **DISMISSED AS MOOT**.

BACKGROUND

On July 09, 2007, applicant filed an amendment After Final, wherein dependent claims independent claims 1, 13 and 21 were amended to include the limitation "and wherein said parametric information further comprises whether each server comprises an inline adaptable cache" and claims 7, 19, 27 were canceled.

On Sept 05, 2007, the examiner issues an Advisory refusing entry of the amendment, citing the proposed amendment would raise new issues that would require further consideration and a new search.

On Sept 24, 2007, applicant filed a petition to the Director under 37 CFR § 1.181 to seek relief from actions of the examiner Joseph Avellino in relation to the Final Office action mailed April 09, 2007. In the petition, applicant's counsel alleges that since the amendments merely incorporated subject matter from various dependent claims into respective independent claims; the amendments do not raise new issues that would require further consideration and/or searches and moreover the amendments place the application in better condition for appeal.

On Nov 28, 2007, applicant filed a Request for Continued Examination (RCE) with the required fee, a preliminary amendment and a petition for three (3) month extension of time.

On Mar 12, 2008, a Non-Final office action was mailed.

RULES AND PROCEDURES

37 C.F.R. § 1.181(f) states, in part:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition ...

37 C.F.R. § 1.114(d) states, in part:

If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination ...

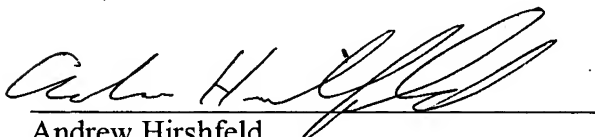
DECISION

As stated in 37 C.F.R. § 1.181(f), the mere filing of a petition will not stay any period for reply that may be running against the application. The delay to render a decision on this petition is hereby regretted.

In view of 37 C.F.R. § 1.114(d) and the timely filing an RCE with the fee set forth in 37 CFR § 1.17(e) and an amendment that meets the reply requirements of 37 CFR § 1.111, the Office has withdrawn the finality of the Office action mailed June 01, 2007.

Accordingly, the petition is **DISMISSED AS MOOT**

Any inquiry concerning this decision should be directed to Kim Huynh, whose telephone number is (571) 272-4147.



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